

Bureau of Land Management, Interior

§ 2201.7-2

waiver will expedite the exchange and why the public interest will be better served by the waiver.

§ 2201.7 Approval of exchanges.

§ 2201.7-1 Notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. A notice also may be published in the FEDERAL REGISTER at the discretion of the authorized officer. At a minimum, the notice shall include:

- (i) The date of decision;
- (ii) A concise description of the decision;
- (iii) The name and title of the deciding official;
- (iv) Directions for obtaining a copy of the decision; and
- (v) The date of the beginning of the protest period.

(2) The authorized officer shall distribute notices to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located pursuant to § 2200.0-6(m) of this part, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to protest.

(c) A right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR part 4.

§ 2201.7-2 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 2201.7-1 of this part. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement shall contain the following:

(1) Identification of the parties, a description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, the amount of any necessary cash equalization, and all other terms and conditions necessary to complete the exchange;

(2) The terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands;

(3) A description of the goods and services and their corresponding costs for which the noncomplying party is liable in the event of failure to perform or to comply with the terms of the exchange agreement; and

(4) The agreed upon values of the involved lands.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) In the event of a protest, or of an appeal from a protest decision under 43 CFR part 4, a decision to approve an exchange pursuant to § 2201.7-1 is upheld; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) Absent an executed legally binding exchange agreement, any action taken by one or more of the parties, or a failure of one or more of the parties to take any action, prior to consummation of an exchange does not create any